

Rubinstein Deposition Transcript Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF §
AMERICA, §
§ CIVIL ACTION NO.
PLAINTIFF, § 1:23-CV-00853-DAE
§
V. §
§
GREG ABBOTT, IN HIS §
CAPACITY AS GOVERNOR OF §
THE STATE OF TEXAS, AND §
THE STATE OF TEXAS, §
§
DEFENDANTS. §

ORAL DEPOSITION OF
CARLOS RUBINSTEIN
JULY 9, 2024

ORAL DEPOSITION OF CARLOS RUBINSTEIN, produced as
a witness at the instance of the Plaintiff and duly
sworn, was taken in the above styled and numbered
cause on Tuesday, July 9, 2024, from 9:34 a.m. to
p.m., before TAMARA CHAPMAN, CSR, RPR-CRR in
and for the State of Texas, reported by computerized
stenotype machine, at the U.S. Attorney's Office for
the Western District of Texas, 903 San Jacinto
Boulevard, Austin, Texas, pursuant to the Federal
Rules of Civil Procedure and any provisions stated
on the record herein.

Job No. CS 6783952

1 Q. What do you mean by "reasonable
2 improvements"?

3 A. That means I -- one, I don't see how you
4 can overcome the cost benefit of wanting to
5 undertake those -- those improvements. There is no
6 demand for that type of use. And within
7 reasonableness, particularly as it relates to this
8 report, there's no way to do that and still protect
9 the existing uses of water that are of a higher end
10 use.

11 If you try to make this navigable, I do
12 not find a way that you can do so without negatively
13 impacting existing rights and that is specifically
14 prohibited in the Texas Water Code.

15 So all of that goes into the
16 reasonableness from my perspective.

17 Q. What reasonable improvements did you
18 consider in forming that opinion?

19 A. The ones that we highlighted in our
20 report as if you consider dredging, those are the
21 impacts that would occur. If you consider taking
22 water, which I hope you don't because there's
23 problems with that, and you released it for
24 additional water to make a navigation, those are --
25 those are the two that I consider or that we

1 consider.

2 Q. Did you -- those are the two that were
3 considered in your report. Were there others that
4 you considered that are not included in the report?

5 A. I don't know what else you could
6 consider. I mean, you know, if you talk to
7 engineers, they'll all tell you that you can always
8 engineer a solution. I'm sure that there's
9 something out there that I haven't considered, but
10 the two that came to mind are dredging or taking
11 water that you don't have a right to and neither one
12 is reasonable and those are the most common ones I
13 would have thought of. Anything else that is
14 available to it, to me, would make it even less
15 reasonable.

16 Q. Have you ever designed or constructed any
17 navigation features?

18 A. Not at all.

19 Q. All right. Paragraph 9 says, quote: We
20 believe that the undertaking of improvements, which
21 in our opinion are not warranted due to lack of
22 demand for the dedication and use of water for
23 navigation, to make the Rio Grande suitable for use
24 as a highway for interstate or foreign commerce and
25 trade in the normal ways that commerce and trade

1 presently are carried on via navigation will cause
2 negative socioeconomic impacts to existing water
3 right holders, decrease water conveyance efficiency
4 and disrupt existing higher end uses of water
5 including domestic and municipal uses.

6 Did I read that correctly?

7 A. Absolutely.

8 Q. You're not an economist, are you?

9 A. I'm not an economist, but as a function
10 of socioeconomic impacts, my work, particularly at
11 the Water Development Board, is a consideration that
12 we definitely had to undertake for any water
13 management strategy.

14 Q. What do you mean by "socioeconomic
15 impacts"?

16 A. So socioeconomic -- you asked earlier
17 about the cases that I've been involved in and you
18 asked -- remember the most recent case, the
19 groundwater case, those permit considerations have
20 to include socioeconomic impacts. I am familiar
21 with that and I testified on those.

22 Socioeconomic impacts also mean, for
23 example, let's say that you -- you live along the
24 I-35 corridor like we all do and you live close to
25 Dallas and Dallas keeps buying water from East

1 What would the impacts be for Mexico
2 water users?

3 A. There are some of the ones that are also
4 enumerated here. For example, let's say you wanted
5 to dredge the river and at the same time rectify the
6 channel. Navigation, in my mind, the more bends in
7 a river, the more difficult it is to navigate it.

8 So what some entities have done is they
9 have rectified or straightened the channel. Any
10 time you do that, whether it's a Mexican water right
11 holder or a U.S. Texas water right holder, to the
12 extent that you move the channel away from their
13 diversion point, that's one negative impact.

14 If you dredge, while you're dredging, you
15 can also kick up a lot of sediment. And from a
16 treatment of water perspective, you can increase
17 costs for treatment for potable purposes, for
18 example.

19 If it's a sediment you kick up,
20 sedimentation is also of high salinity, which does
21 exist in the river in some parts, you can increase
22 the salinity of the water, which is detrimental
23 particularly for crops. The others you and I have
24 talked about this morning.

25 Depending on how you are going to dredge

1 and then find the water to keep the channel charged,
2 as I call it, you would increase potentially --
3 well, you potentially would increase additional bank
4 storage of loss, but in my mind you would also
5 increase evaporative losses.

6 But I think they're enumerated in the
7 others that we'll have in here.

8 Q. Sure. Did you study or conduct any
9 analysis on the impact from rectifying the channel?

10 A. No. As we mentioned earlier, the U.S.
11 hadn't provided any data. And so it's just our
12 opinion of the expected impacts and concerns that we
13 have and others should have should this be pursued.

14 Q. And did you study or analyze the impact
15 on sediment and treatment?

16 A. No, it's just my personal knowledge
17 having been involved in this for almost 40 years.

18 Q. And same question about whether you
19 studied or analyzed the salinity issues that you
20 mentioned and the potential impact that that may
21 have here?

22 A. I did not, but to this question and the
23 previous one you just asked, when I did work for the
24 predecessor or the Water Commission, the predecessor
25 to the TCEQ, it involved water quality sampling as

1 well and sediment sampling was a big portion of
2 that. So I am familiar with the constituents that
3 are commonly found in various parts of the river.

4 Q. So Paragraph 2 says: Mexico's approval
5 will likely be required as they and their water
6 users will be impacted.

7 How would Mexico's water users be
8 impacted beyond what we just discussed?

9 A. Beyond what we just discussed, the only
10 thing I would add -- and I think we've discussed it
11 earlier -- is they also will be impacted by
12 increased losses. But everything else I think you
13 and I just covered in general terms. There might be
14 additional impacts to some of them.

15 Remember I mentioned earlier that Mexico
16 typically diverts its water by gravity? If you
17 change the head pressure, that could impact them
18 potentially because I don't know it for a fact, then
19 that might be an additional impact that I would have
20 a concern.

21 Q. So you are assuming that there would be a
22 loss of water to Mexico, then?

23 A. Yes. Or a loss of water or loss of
24 access to water. They're two different things.

25 Q. And under the treaty, United States only

1 Q. So let's turn to the next section on
2 Page 12 of Exhibit 1: Impacts to Texas's water
3 users if water is dedicated or released for future
4 navigation.

5 A. Yes, sir.

6 Q. And so this is the second improvement
7 that you considered that we've discussed today.

8 Correct?

9 A. Yes, sir.

10 Q. And this is -- this improvement with the
11 lock system or increased water flow and channel
12 assumes that additional water releases would be
13 required?

14 A. How else are you going to increase the --
15 the depth of the river to a place where it would be
16 able to allow for the passage of larger-scale boats.

17 I mean, like we mentioned at the very
18 beginning, if you don't have the water, you can't
19 have navigation.

20 Q. When you say "larger-scale boats" are you
21 referring to what we were talking about earlier
22 about the intercoastal and the ports with the large
23 barges and the freighters and those sorts of...

24 A. That's fair enough. Yes, sir.

25 Q. What did you assume for the lock and

1 channel system in the second improvement?

2 A. I did not assume costs. I did not assume
3 engineering factors, because I just don't do that.

4 I did expect, and I think it's reasonable, that if
5 you're going to build a lock, because I have been
6 through locks before. I know the water that is
7 required to fill and empty. I know what that -- as
8 we mentioned repeatedly today, any time you do
9 anything with water, you're losing it. I know the
10 impacts that that would make. There's just not that
11 water available.

12 And there is a side issue. We talked
13 earlier this morning, I think, about the
14 inextricable nature of the volume of water in the
15 international reservoirs. You remove it from the
16 international reservoirs to be -- to make what is
17 absolutely not needed, but somebody wants to build a
18 lock system, you cannot account for that water for
19 allocation. You have now impacted all water right
20 holders. That's the basis for that.

21 Q. How many lock systems did you assume for
22 purposes of this second hypothetical?

23 A. I hope that nobody ever thinks of
24 building a lock system. I'm just saying if somebody
25 thinks that that is an option, it comes with a lot

1 of negative impacts as it relates to water. I did
2 not make a determination of how many would be
3 needed.

4 Q. Did you make a determination on the size
5 of the channel or the depth?

6 A. Tangentially my knowledge of the
7 intercoastal and its depth, my knowledge of the
8 waterway and the turning basin at the port of
9 Harlingen, I figured that at a minimum you needed
10 12- to 15-feet, at a minimum. I don't know how wide
11 it would have to be, and the meandering section of
12 the river would end up being a determining factor so
13 that you could actually navigate it.

14 Those are just, in my mind, at least
15 starting points that I would consider. Because they
16 have -- I have a reference point.

17 Q. Did you consider -- or where did you
18 assume that the lock systems would be located, if
19 anywhere?

20 A. I didn't.

21 MR. TEBO: Objection; form.

22 A. I didn't. I'm just saying because there
23 has been no specificity put forward by the U.S.,
24 if -- you can release water and make it -- and try
25 to make it usable two ways.

1 United States to promote navigation on the Rio
2 Grande would have a negative impact to the property
3 interest benefits and enjoyment of use by Texas
4 water right holders.

5 Did I read that correctly?

6 A. You did.

7 Q. And that goes to the point you were just
8 making?

9 A. Yes, sir, it absolutely does.

10 Q. So I know we talked about -- I think
11 we've talked about this or touched on it earlier,
12 but navigation can be an incidental use for -- of a
13 beneficial use. Correct?

14 A. The Water Code allows you to seek a
15 permit to add navigation. But, again, let's not
16 forget all of the other burdens that are on the
17 applicant to be able to sustain why it should be
18 granted.

19 Q. What is the basis for your statement that
20 promoting navigation would have a negative impact to
21 the property interest benefits and enjoyment of use
22 by Texas water right holders?

23 A. What we've been talking about at length
24 today. You're changing how the river is used,
25 you're going to be changing its efficiency, you're

1 going to be changing where water is being stored and
2 used at any given time.

3 Any time you reduce the efficiency of the
4 operations of the river, you are impacting existing
5 water right holders. It is that simple.

6 Q. And so is it your opinion, then, that
7 there is a negative impact for all Texas water right
8 holders?

9 A. Yes. And more so, even though it may --
10 well, there'll be additional water in this segment
11 at one given point. All of those water right
12 holders are still dependent on the stock resources.

13 The stock resource is water at the lake.
14 You're going to be reducing that. So while I may
15 benefit at one time because also I have a real fat
16 river going by my house or my farm, at the end of
17 the month I better not complain that I didn't get an
18 allocation. That's why.

19 Q. The federal government, through the Army
20 Corps of Engineers and other federal agencies,
21 conducted civil works projects in Texas. Correct?

22 MR. TEBO: Objection; form.

23 A. I would not be surprised. If -- in fact,
24 I think you're right. There are Corps of Engineers
25 reservoirs in other parts of Texas.

1 Q. If Congress authorized a project to aid
2 navigation on the Rio Grande, is it your testimony
3 that such a project requires the federal government
4 to obtain a water right from Texas?

5 A. Okay. One more time.

6 Q. Sure.

7 A. Or if you can just expand on it,
8 because I -- the way you asked it, yes.

9 Q. Okay. Well, I want to make sure -- I
10 want to make sure we're not talking past each other,
11 so...

12 A. Yeah.

13 Q. If Congress authorizes a project to aid
14 navigation on the Rio Grande, is it your testimony
15 that that project requires a water right permit from
16 the State of Texas?

17 A. How else are you going to give it that
18 use, and where is the water going to come from to
19 satisfy that project?

20 Without knowing the particulars of how
21 you would make it navigable, yes, absolutely. I can
22 see where that's going to require a water right, at
23 a minimum, just to add the use.

24 Q. What federal civil works projects in
25 Texas has the federal government obtained water

1 rights or used permits from TCEQ for?

2 A. One that comes to mind are some
3 reservoirs in East Texas that the Corps, I believe,
4 operates. I'm sure there are many others. I
5 wouldn't be surprised if some of the Highland Lakes
6 had Army Corps attachment. I would not be
7 surprised. There might be numerous.

8 Q. Are you aware of any that -- any water
9 rights permits for projects that were done in aid of
10 navigation?

11 A. I'm not aware of that, sir.

12 Q. So are you saying that any federal
13 project to aid navigation is impossible because the
14 Corps cannot obtain a water right permit from the
15 State of Texas?

16 A. On the Rio Grande?

17 Q. On the Rio Grande.

18 A. I don't know how you overcome -- as a --
19 when it comes to water issues, one of the critical
20 things that you first have to overcome, and the EPA
21 is a stickler on this, is purpose and need. Where
22 is the need?

23 I don't see how you overcome that
24 obstacle. I don't think you get to a credible
25 application, but you're entitled to file one, you

1 know, and the Commission will consider it based on
2 its merits. I just don't see how you overcome some
3 real hard barriers.

4 Q. So you're not saying that the Corps or
5 the federal sponsor could not apply for
6 appropriation. You're just saying that it would be
7 very difficult, if not impossible, for them to
8 submit a successful application for a water right
9 permit?

10 A. That's very well stated. They could
11 apply. The burden is on the applicant to overcome
12 its burden to prove a need. I don't think you'd get
13 there.

14 Q. Could Congress approve a federal project
15 that allows the Corps or a federal sponsor to take
16 existing water rights through condemnation or other
17 authorization?

18 A. Y'all are attorneys. I am sure that if
19 they did that, there would be hundreds of lawsuits
20 on a takings claim. You know, let's face it.
21 Sometimes legislatures do dumb things. Right?

22 Q. Do you agree that federal authority over
23 navigation under the -- do you agree that federal
24 authority over navigation is superior to Texas's
25 authority over state waters?

1 MR. TEBO: Objection; form.

2 A. I don't think those dots connect. I
3 don't disagree that the federal government, because
4 of the discussion we had earlier this morning on the
5 commerce clause, has absolute primacy over those
6 matters, but I also believe that the primacy of the
7 use of state waters cannot be hindered either. And
8 if you do, I'm not a lawyer, but I'm sure there'll
9 be hundreds of lawsuits for a taking.

10 Because in particular, in this instance,
11 the water rights have been fully adjudicated. There
12 is no extra water. So you're dealing with
13 somebody's property right.

14 Q. So Paragraph 4 at the bottom of Page 12
15 says: Would Mexico participate in this project for
16 the reasons explained above? We don't think so.

17 We've already talked about some of the
18 reasons already. Are there any others that form the
19 basis of this statement?

20 A. I think we have covered them all, but,
21 you know, the cost, the benefit, why are you even
22 doing this, how would it impact, without knowing any
23 specifics because none have been put forward, I
24 don't see how you could convince Mexico to actually
25 allow this to occur, particularly purpose and need.

1 There is absolutely no need.

2 I can tell you that I know for a fact
3 that if the Brownsville weir dam were constructed,
4 it would also have a huge benefit to Matamoros at
5 their diversion point because their diversion point
6 would be in the pool. But they still haven't
7 approved that one because they have what can be very
8 legitimate concerns about the impacts of a rising
9 water table on their residents. So if you can't
10 even get that weir dam approved, I don't know how
11 you get anything else done.

12 You see what I'm saying?

13 Q. So Paragraph 5 on Page 13 says -- posed
14 the question: How much water would be required to
15 facilitate this project?

16 Let's say for discussion purposes it's
17 100,000 acre-feet annually. How did you determine
18 to use the 100,000 acre-feet annually here?

19 A. I just picked it out as a number. We
20 both did, actually. It -- because we think it's a
21 substantial amount that you would need in that
22 segment. I actually think you're going to need a
23 heck of a lot more than that. This is a very
24 conservative number, but we just picked it for
25 argument's sake. It isn't the -- the value. It's

1 to make the point further down that we're making
2 that every acre-foot that you take that is currently
3 allocated to the conservation pool and you remove it
4 from the conservation pool by unilateral action, you
5 are having a one-to-one negative impact on all
6 existing water.

7 We could have put a million. We could
8 have put 50,000. It doesn't matter. The point is
9 you move an acre-foot out of conservation. You take
10 it out of the allocation process. You have
11 negatively impacted all existing rights. That's
12 what we mean.

13 Q. So the 100,000 acre-feet number was not a
14 calculation or something that you derived from
15 the --

16 A. We could replace it with 50,000 if you'd
17 like or 200,000. The point was not the volume as a
18 computation of volume would be required. The point
19 we're making is you're taking water out of the
20 conservation pool that's already been fully
21 allocated and that represents a negative impact.
22 That's the point we're making. It is not a
23 calculation that three locks are going to require
24 this. That is not it at all.

25 Q. So in 5A, it says: Would this water be

1 finished.

2 So your question, then, that you pose is:
3 How would the reservoir operations that you just
4 described be adjusted in the event of the increased
5 water flow and releases that would occur?

6 A. Particularly, as it impacts the
7 conservation pool, because the conservation pool is
8 fully adjudicated. So who's going to be calling for
9 that water now?

10 Q. Page 14, first paragraph at the top at
11 the end of it, it says: The United States has not
12 provided answers or specificity relative to these
13 important considerations.

14 Were Congress to approve a project to aid
15 in navigation on -- of the Rio Grande, is it your
16 understanding that implementation of any such
17 project would include a notice and comment period?

18 MR. TEBO: Objection; form.

19 A. I would not be surprised. Not only that,
20 I also think it would require a NEPA finding of no
21 significant impact. Things like that. Substantial
22 reviews.

23 Q. And then in the next paragraph four lines
24 down it says: We believe the economic costs of
25 creating such a system of navigation on the Rio

1 Grande would be economically unfeasible.

2 And I think we've talked today about
3 how -- you didn't do specific calculations for
4 analysis of -- of quantifying those analyses for
5 your report?

6 A. I did not. The statement is -- I think
7 we've covered it during the day -- based on my
8 experience and that of Herman's as well. The fact
9 that there's no need, the fact that you can't
10 quantify a benefit, can't even point to who would be
11 using it. It's just infeasible.

12 Q. Infeasible from an economic perspective?

13 A. And a sustainability. Remember I
14 mentioned viable, feasible, and sustainable? I
15 don't even think it's viable. I don't think it
16 meets any of the three. But yes.

17 Q. And the -- your basis for that is not as
18 an economist but based on your experience and
19 background?

20 A. Absolutely.

21 Q. So if you go down, the third line,
22 actually move up one, it says: Most anything can
23 have an engineered solution.

24 A. Okay. Now, let me find it.

25 Q. Oh, sorry. Same paragraph, third line

1 the paragraph that starts with "Could the Rio
2 Grande..."

3 A. Yes, I'm there with you now.

4 Q. Sure.

5 "So could the Rio Grande become a
6 commercially navigable waterway with the
7 intercoastal canal or similar systems, could lock
8 and dams be constructed on the Rio Grande.
9 Constructionwise, it's possible. Most anything can
10 have an engineered solution but not always a
11 feasible or correct action to undertake."

12 Did I read that correctly?

13 A. Yes, you did.

14 Q. And that's this -- this is kind of the
15 discussion that we've been having since lunch about
16 the reasons for your opinion on that?

17 A. And even, I think, before lunch.

18 Q. Before lunch.

19 A. Yeah.

20 Q. So fair to say that improvements to
21 navigation can be -- can be made?

22 A. Like we said, most anything can be
23 engineered. It doesn't mean that it's needed. It
24 doesn't mean that it makes sense.

25 Q. And then towards the bottom of that

1 When I was city manager in Brownsville and we were
2 building a third bridge and we were issuing debt for
3 it, the sustainability, which we have talked about
4 of that bridge as a project came -- was also
5 something we had to justify.

6 And one of the elements, for example, is
7 commerce telling us, and me as city manager, we will
8 not use your bridge unless you build a direct
9 connection to the expressway. And guess what? We
10 did. And all of that highlights the importance of
11 timeliness and cost-effectiveness. When I was city
12 manager in Brownsville, commerce, believe it or not,
13 requested an overweight corridor to transport more
14 goods over one particular highway near Brownsville
15 and they got it.

16 Q. When you say "commerce," what do you mean
17 by that?

18 A. Cargo from the port. Take your pick. It
19 could be petrochemical, refined products. It can be
20 grain.

21 Q. So is it those entities that were
22 reaching out to the -- to you and the City to say
23 build the overweight -- or overweight roads or --
24 I'm just trying to understand the...

25 A. Two distinct issues I'm -- that I'm

1 referencing. The interconnections between the
2 bridge and the expressway was all kind of commerce,
3 including vehicular traffic.

4 But in particular, truckloads of moving
5 packaged goods, things like that. The overweight
6 corridor was to move goods that were arriving at the
7 port of Brownsville to Matamoros. And they
8 required -- requested not from the City, but the
9 City had to participate in it, an overweight
10 designation for the connector between the port and
11 the Gateway international bridge.

12 Q. Is that the bridge commonly also referred
13 to as the Veterans Bridge?

14 A. Gateway is not the Veterans Bridge.
15 Gateway is the second new bridge, quote, unquote.
16 Veterans is the bridge I reference where we did the
17 connector to the expressway. The overweight
18 corridor was to get more freight by truck from the
19 port to Gateway. And it's right downtown.

20 Q. Besides your experience with the
21 development and construction of the -- what we've
22 just discussed with the Gateway Bridge and the
23 corridor, did you do any economic analysis or
24 calculations to determine economic feasibility for
25 moving the river back to -- or moving the river back

1 to river transport for navigation?

2 A. No.

3 Q. Do you know who authorized the
4 construction of the Veterans Bridge?

5 A. It was -- who authorized it?

6 Q. Uh-huh.

7 A. A lot of -- okay. It's a joint project
8 between Cameron County and the City of Brownsville.
9 It was -- it had to receive a presidential permit,
10 so that had to be whoever was president or the
11 administration in '96, '97. And we issued --
12 jointly issued the debt, "we" being the City of
13 Brownsville and Cameron County. And so we were the
14 U.S. sponsors. I don't know who was the Mexican
15 sponsor.

16 Q. Was any part of it federally
17 appropriated?

18 A. I don't know, but, in honesty, remember
19 the connector that I referenced to connect the
20 bridge to the expressway? That -- that came from
21 highway funds, and those are reappropriated -- you
22 can split hairs.

23 We all pay a gas tax that goes to the
24 feds. The feds return it to the states and that's
25 where that bridge was paid for. So it was a return

1 of money we all had already paid in gas tax. I
2 guess you could call it reappropriated or we just
3 got our money back. Take your pick.

4 Q. Were any water rights or permits obtained
5 as part of the construction of the Gateway Bridge or
6 the Veterans Bridge?

7 A. None that I'm aware of. None that I
8 know -- I don't know of any that exist.

9 Q. Let's go to Page 15, the reasons for
10 opinions. And I realize we have probably talked
11 about a fair number of these, but I want to make
12 sure that I'm not missing anything.

13 A. You bet.

14 Q. So under reasons for opinions, physical
15 barriers, No. 1 it says: There is insufficient
16 water supply in the Rio Grande upstream from Laredo,
17 now and in the foreseeable future, to make any
18 necessary improvements to make navigation feasible.

19 And just to confirm from what we
20 discussed earlier, you did not do any calculations
21 or analysis to determine how much insufficient water
22 supply there is?

23 A. There is no water available. It's a
24 fact. We do determinations based on water
25 availability models. Water availability models take

1 They don't add or detract from my opinion.

2 Q. In Paragraph 2 under treaty and
3 regulatory barriers, you note that: To reprioritize
4 the use of the Rio Grande for water navigation would
5 inflict serious hardship on cities and consumers.

6 Again, you did not do any analysis or
7 calculations on what the hardships would be on
8 cities and consumers. Is that correct?

9 A. No. This is a factual statement. And I
10 think we covered that in previous questions, where
11 we talked about what happens when you increase the
12 silt, what happens when you rectify river -- that's
13 what we're really referencing.

14 Q. And the same would be for the -- on
15 farmers in both United States and Mexico?

16 A. One additional consideration there,
17 remember, but we've talked about it, is where they
18 lie in the priority of allocation. So the farmer
19 actually would be hit even harder.

20 Q. Under "Economic Barriers and Needed
21 Consents," you note that it says: The negative
22 socioeconomic impact to existing users of water from
23 an unwanted reapportionment of water to navigation.

24 What analysis did you do to determine
25 that the reapportionment would be unwanted?

1 A. Unwarranted.

2 Q. Unwarranted.

3 A. There's no need for navigation. It's
4 that simple. It's not warranted. There's no
5 demonstrated demand.

6 Q. And in the next line of Paragraph 1, it
7 says: Coupled with potential costs to improve and
8 maintain navigation on the relevant stretch of the
9 Rio Grande where there is no demonstrated demand
10 it's difficult to justify.

11 What is the relevant stretch that you're
12 referring to here?

13 A. The segment that is part -- that you-all
14 have agreed, the mile markers. That's what I mean.

15 Q. 275.5 to 610?

16 A. Yes. But I also think that that
17 opinion -- I hold that opinion of the river itself,
18 but in particular that segment, yes.

19 Q. Did you quantify what the potential costs
20 to improve navigation would be?

21 A. No, because I'm not justifying or
22 advancing that that should be undertaken. I...

23 Q. It's -- oh, I'm sorry.

24 A. Yeah, no. It's just...

25 Q. And same question about whether you

1 determined or analyzed what the potential costs to
2 maintain navigation might be?

3 A. No, I did not. That's correct.

4 Q. No. 2 under Economic Barriers and Needed
5 Consents on Page 16, it says that: Improvements to
6 the relevant stretch of the Rio Grande to make it
7 commercial -- commercially navigable would require
8 large financial resources appropriated by the
9 Congress of the United States and by Mexico that are
10 a very doubtful ability.

11 How do you know that any improvements
12 would require funding from Mexico?

13 A. Because the treaty specifies that when
14 you're going to undertake joint projects in the
15 river, that you are supposed to cost share or
16 determine the cost share factor. It is true on how
17 we build the two international reservoirs. It's
18 true on how the El Morillo drain operates, it's true
19 on Anzalduas, it's true of Retamal. That's just a
20 fact.

21 Q. But if it was not a joint project, then
22 that would not -- there would not be a cost -- a
23 cost sharing?

24 A. I guess conceivably there -- there could
25 be one. I mean, but then you would be shifting the

1 whole burden to fund a project that isn't needed to
2 one entity. But I guess that's a determination that
3 could be made.

4 Q. And then the last section, Paragraph 3,
5 under "Economic barriers and needed consents," says
6 that: Improvements to the relevant stretch of the
7 Rio Grande to make it commercially navigable could
8 not be accomplished by the Army Corps of Engineers
9 which has no authorization or ability to operate
10 Amistad Dam, to dredge in the channel of the
11 Rio Grande, to remove plant species from the
12 Rio Grande, or to stabilize the banks of the
13 Rio Grande.

14 Who, in your opinion, has -- and I
15 think the -- who has -- who, in your opinion, has
16 the authority to do that?

17 A. Next sentence: These actions would have
18 to be accomplished and approved by the IBWC.

19 The treaty is very clear.

20 Q. Could Congress delegate the authority to
21 the Army Corps of Engineers or other federal
22 agencies?

23 MR. TEBO: Objection; form.

24 A. If they -- I'm -- I'm going to give you
25 an absolute example of if Congress tried to do that,